

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

KEVIN J. SELKOWITZ, an individual,

Plaintiff

v.

LITTON LOAN SERVICING LP, a Delaware
Limited Partnership; NEW CENTURY
MORTGAGE CORPORATION, a California
Corporation; QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, a
Washington Corporation ; FIRST AMERICAN
TITLE INSURANCE COMPANY, a
Washington Corporation; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., a Delaware Corporation, and DOE
Defendants 1-20,

Defendants.

NO. 3:10-cv-05523-JCC

MOTION FOR REMAND

NOTE ON MOTION CALENDAR:
September 3, 2010

TO: THE HONORABLE JOHN C. COUGHENOUR, U.S. District Court Judge; and

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

I. NOTICE OF HEARING

PLEASE TAKE NOTICE that on September 3, 2010, or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable John C. Coughenour, United States District Court Judge, 700 Stewart St., Seattle, WA 98101, the Plaintiff in the above captioned proceeding will and hereby does move the Court for an order remanding these proceedings to the King County Washington Superior Court, from which these proceedings were removed on or about July 27, 2010.

NOTICE OF MOTION AND MOTION FOR REMAND

Page 1

RICHARD LLEWELYN JONES, P.S.

ATTORNEY AT LAW
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Suite 230
Bellevue, Washington 98004
(425) 462-7322

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II. MOTION

COMES NOW the Plaintiff, KEVIN SELKOWITZ, by and through his attorney, RICHARD LLEWELYN JONES, P.S., and moves the Court for an order remanding these proceedings to the King County Washington Superior Court, from which these proceedings were removed on or about July 27, 2010.

III. STATEMENT OF FACTS

3.1 Plaintiff executed a Deed of Trust on November 1, 2006, with Defendant FATCO as trustee, naming MERS as purported beneficiary; the lender was identified as New Century Mortgage Corporation. This instrument was recorded in King County under Recordation No. 20061101000910, encumbering the Property.

3.2 As of November 1, 2006, and subsequently at all times thereafter, the Plaintiff owed to MERS no monetary or other obligation under the terms of any promissory note or other evidence of debt executed contemporaneously with the deed of trust referenced in paragraph 3.1.

3.3 On May 12, 2010, Defendant MERS executed, as beneficiary of the security instrument referenced in paragraph 3.1, an Appointment of Successor Trustee nominating Defendant QLS as trustee. This instrument was recorded in King County under Recordation No. 20100520000866 on May 20, 2010.

3.4 On May 27, 2010, Defendant QLS executed a Notice of Trustee's Sale in connection with the Property. This instrument was recorded in King County under Recording Number 20100601001460 on June 1, 2010.

3.5 A search of the public records indicates that no assignment of the Deed of Trust or Note has ever been recorded. Upon information and belief, MERS has never owned the debt

1 secured by the Deed of Trust at issue herein. Further, Defendant MERS never obtained
2 possession of the Promissory Note which secures the subject Deed of Trust.

3 *Suit Filed and Related Post Filing Acts*

4 3.6 On July 2, 2010, the above-captioned matter was filed in King County Superior Court
5 under King County Superior Court Cause No. 10-2-24157-4 KNT. Plaintiff's Complaint raised
6 predominately issues of State law, including action for quiet title, wrongful foreclosure, defamation of
7 title, malicious prosecution and violation of the Washington State Consumer Protection Act, *RCW 19.86*,
8 *et seq.* As a basis for alleging a *per se* violation of the Washington State Consumer Protection Act, *RCW*
9 *19.86*, Plaintiff raised a claim for violation of the Fair Debt Collection Practices Act, *15 USC 1662, et*
10 *seq.* A true and correct copy of Plaintiff's Summons and Complaint is attached to Defendant's Notice of
Removal, on file herein.

11 3.8. On July 13, 2010, counsel for First American Title Insurance Company ("FATCO") filed
12 a Notice of Appearance.

13 3.9 On July 23, 2010, counsel for defendants Litton Loan Servicing, LP ("Litton") and
14 Mortgage Electronic Registration Systems, Inc. (MERS) filed a Notice of Appearance.

15 3.10 On August 6, 2010, counsel for defendant FATCO filed a Motion to Dismiss Complaint.

16 3.11 On August 12, 2010, counsel for defendants Litton and MERS filed a Motion to Dismiss
the Complaint.

17 3.12 On August 16, 2010, Plaintiff filed an Amended Complaint, which does not include any
18 claim of right arising under the laws of the United States.

19 **IV. STATEMENT OF ISSUES**

20 4.1 Does this Court have jurisdiction and venue when the Amended Complaint raises no federal
21 claims or rights?
22

1 **V. STATEMENT OF LAW AND ANALYSIS**

2 Pursuant to the provisions of 28 U.S.C. § 1441(b), an action may be removed to federal court if
 3 it is a civil action founded on a claim or right arising under the laws of the United States. Based on the
 4 Amended Complaint, a federal claim or right no longer exists in this action. Amendment of the
 5 Complaint without the other parties consent or leave of court was timely under *FRCP 15(a)(1)(B)*, as it
 6 was filed within 21 days after service of a responsive pleading or 21 days after service of a motion under
 7 Rule 12(b), (e), or (f). The earliest responsive pleading or motion under Rule 12(b) in this action was
 filed on August 6, 2010.

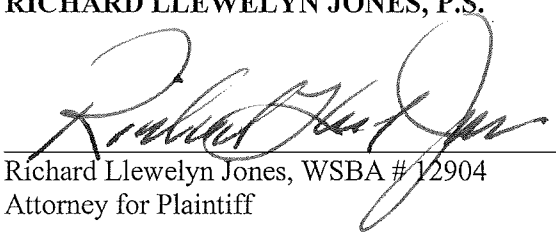
8 **VI. RELIEF**

9 For the reasons state hereinabove, it is respectfully submitted that the Court should remand this
 10 action to the King County Superior Court.

11 The Amended Complaint is not founded on any claim or right arising under federal law.
 Accordingly, remand is required.

12 **RESPECTFULLY SUBMITTED** this 18th day of August 2010.

13 **RICHARD LLEWELYN JONES, P.S.**


14 
 15 _____
 16 Richard Llewelyn Jones, WSBA # 12904
 17 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury of the laws of the State of Washington that on this 19th day of August 2010, I caused to be delivered a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR REMAND** to the following in the manner indicated:

Ann T. Marshall Bishop White Marshall & Weibel PS 720 Olive Way Ste 1301 Seattle, WA 98101-1834	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input checked="" type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile
Heidi E. Buck Routh Crabtree Olsen, P.S. 3535 Factoria Blvd SE Ste 200 Bellevue, WA 98006-1263	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input checked="" type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile
Kennard M. Goodman Bishop White Marshall & Weibel PS 720 Olive Way Ste 1301 Seattle, WA 98101-1834	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input checked="" type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile
Mary Stearns McCarthy & Holthus LLP 19735 – 10 th Avenue NE, Suite N200 Poulsbo, WA 98370	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger/Processor <input checked="" type="checkbox"/> By ECF <input type="checkbox"/> By Facsimile

Signed this 19th day of August, 2010 at Bellevue, Washington.


Susan L. Rodriguez